

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

David Zimmerman,	)	
	)	
Plaintiff,	)	
	)	<b>ORDER</b>
vs.	)	
	)	
SkyWest Airlines, Inc.,	)	Case No. 3:22-cv-45
	)	
Defendants.	)	

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Before the Court is a motion to dismiss for failure to state a claim filed by Defendant SkyWest Airlines, Inc. (“SkyWest”) on April 26, 2022. Doc. No. 6. On May 17, 2022, Plaintiff David Zimmerman filed an amended complaint (Doc. No. 7) and a response to the motion to dismiss (Doc. No. 8). Given Zimmerman’s filing of the amended complaint, the Court finds as moot SkyWest’s motion to dismiss.

Zimmerman filed his original complaint against SkyWest on March 14, 2022. Doc. No. 1. As alleged, Zimmerman is deaf and communicates by using American Sign Language, speaking, and reading the lips of others, and therefore is an individual with a disability. Id. SkyWest hired Zimmerman as a parttime ramp agent at a North Dakota location. Id. In the original complaint, Zimmerman alleges that SkyWest violated both the American with Disabilities Act and the North Dakota Human Rights Act by failing to accommodate, discriminating, and retaliating in relation to his disability. Id. In response, SkyWest filed a motion to dismiss the original complaint for failure to state a claim upon which relief can be granted, arguing, among other things, that Zimmerman did not allege facts that he was qualified for the for the position for which he was hired.

Zimmerman responded to the motion to dismiss by filing an amended complaint, as permitted by Federal Rule of Civil Procedure 15(a). Doc. No. 7. In the amended complaint, Zimmerman alleges several additional facts, some of which pertain to his alleged qualifications. Zimmerman also filed a response to the motion to dismiss, and in that response, he cites to both the original complaint and the amended complaint. See Doc. No. 8.

As a procedural guidepost, Rule 15(a) of the Federal Rules of Civil Procedure provides, in pertinent part:

**(a) Amendments Before Trial.**

**(1) *Amending as a Matter of Course.*** A party may amend its pleading once as a matter of course within:

**(A)** 21 days after serving it, or

**(B)** if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

Fed. R. Civ. P. 15(a). Zimmerman, in compliance with Rule 15(a)(1)(B), filed an amended complaint in response to SkyWest's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b). Per the Rules of Civil Procedure, the amended complaint serves as Zimmerman's response to the motion to dismiss.<sup>1</sup> Indeed, Rule 15 was amended in 2009 to permit "responsive amendment" to a motion to dismiss pursuant to Rule 12. The advisory committee notes state, "A responsive amendment may avoid the need to decide the motion or reduce the number of issues to be decided[.]" Effectively, the amended complaint moots the original motion to dismiss filed by

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<sup>1</sup> The Court acknowledges that Zimmerman responded substantively to the motion to dismiss. Doc. No. 8. However, the response highlights the procedural issue, as the response cites to both the original complaint and the amended complaint, and there are factual differences between the two complaints. As a part of docket and record management, and consistent with the Federal Rules of Civil Procedure, the Court concludes the amended complaint is the response to SkyWest's motion to dismiss.

SkyWest, as that motion moved to dismiss the original complaint, which has now been amended and changed in response to the motion to dismiss. As such, and consistent with the Rules of Civil Procedure, the Court declines to allow either party to address changes to the amended complaint their response or reply to the original motion to dismiss.

After carefully reviewing the entire record and the relevant law, the Court **FINDS AS MOOT** SkyWest's motion to dismiss (Doc. No. 6). Consistent with Federal Rule of Civil Procedure 15(a)(3), SkyWest has 14 days from the date of this order to respond to the amended complaint, if necessary. See Fed. R. Civ. P. 15(a)(3).

**IT IS SO ORDERED.**

Dated this 19th day of May, 2022.

/s/ Peter D. Welte  
Peter D. Welte, Chief Judge  
United States District Court